



# Cost Price and Finance



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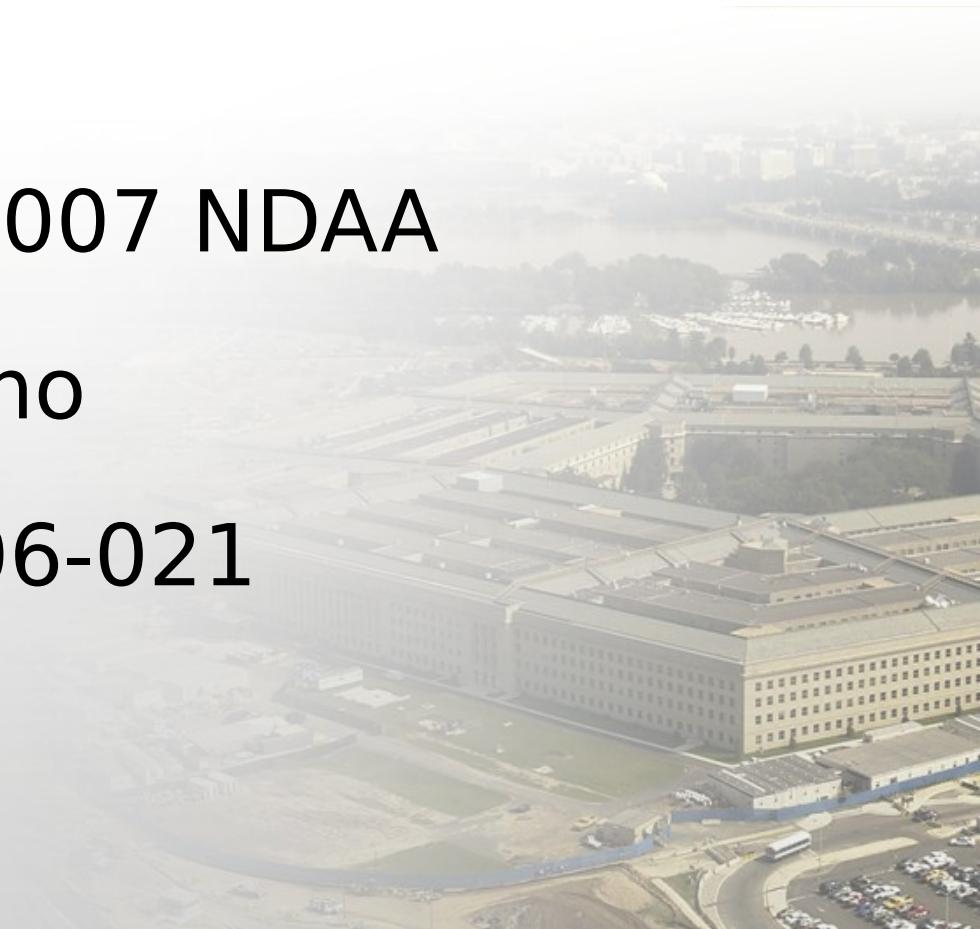
# Agenda

- ▶ Award Fee
- ▶ Definition of Cost or Pricing Data
- ▶ Excessive Pass-Thru
- ▶ T&M Contracts



# Award Fee

- ▶ GAO Report
- ▶ Section 814 of 2007 NDAA
- ▶ DPAP Policy Memo
- ▶ DFARS Case 2006-021





# Award Fee Policy

- ▶ Link award fee to desired outcomes
- ▶ Use objective criteria to measure contractor performance
- ▶ Use standard performance measures to ensure earned award fees equal contractor performance
- ▶ HCA must sign D&F for CPAF contracts
- ▶ Guidance on rollover of unearned award fee



# Definition of Cost or Pricing Data

Pre\_

FARA/ FASA

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Cost or  
pricing data

Certified cost  
or pricing data

Post

FARA/ FASA

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Information  
other than cost  
or pricing data

Cost or  
pricing data



# Definition of Cost or Pricing Data

Pre	Post	Proposed
<u>FARA/ FASA</u>	<u>FARA/ FASA</u>	<u>Rule</u>
Cost or pricing data	Information other than cost or pricing data	Cost or pricing data
Certified cost or pricing data	Cost or pricing data	Data other than cost or pricing data



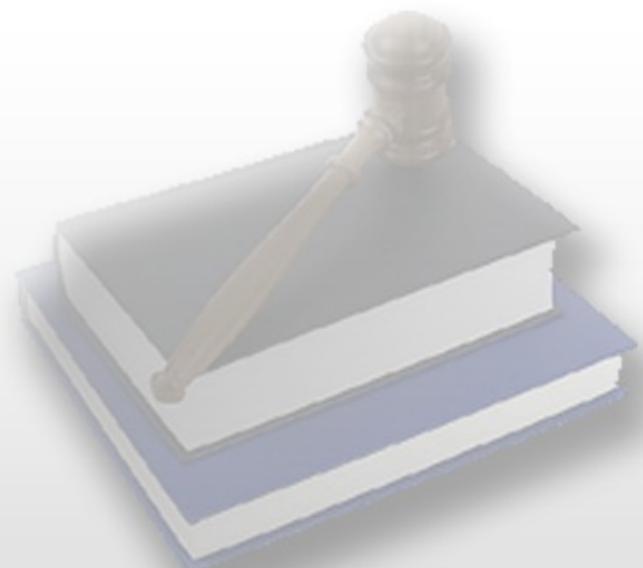
# Definition of Cost or Pricing Data

- ▶ Cost or pricing data
  - All the **facts** that prudent buyers and sellers would reasonably expect to affect price negotiation
- ▶ Certified cost or pricing data
  - Cost or pricing data that is certified
- ▶ Data other than certified cost or pricing data
  - Can include cost or pricing data and **judgmental information** necessary to determine fair and reasonable price or cost realism
- ▶ Get data needed to determine fair and reasonable prices
- ▶ FAR Case 2005-036



# Excessive Pass-Through Charges

- ▶ Sec. 844 of 2007 NDAA
- ▶ DFARS Case 2006-D057





# Excessive Pass-Through Charges

- ▶ Prohibition on “excessive pass-through” charges
  - Charges for indirect costs and profit on work performed by a subcontractor when upper-tier contractor adds no or negligible value are excessive pass-through
  - Charges for managing subcontracts, including applicable indirect costs and profit, are not excessive pass-through
- ▶ DFARS Case 2006-D057



# Time-and-Materials/Labor-Hour

- ▶ New Rules
- ▶ Problems Under the New Rules
- ▶ GAO Study on DoD's Use of T&M's
- ▶ Recent Legislation
- ▶ Future of T&Ms in DoD



# New Rules

- ▶ FAR Case 2003-027,  
Commercial T&Ms
- ▶ FAR Case 2004-015, Non-  
commercial T&Ms
- ▶ DFARS Case 2006-D030, Non-  
commercial, competitively  
awarded DoD T&Ms



# Problems Under the New Rules

- ▶ Payments on Time-and-Materials and Labor-Hour Contracts  
FAR Case 2007-003





# Commercial T&M Problems

- ▶ Payment and acceptance
  - Termination for cause
  - Nonconforming supplies and services





# Non-Commercial T&M Problems

- ▶ T&M clause conflicts with Allowable Cost and Payment clause
- ▶ Clause unclear on prompt payment interest for interim payments





# GAO on DoD's Use of T&Ms

- ▶ Defense Contracting: Improved Insight And Controls Needed over DoD's Time-and Materials Contracts (GAO-07-273 June 1, 2007)
  
- ▶ DFARS Case 2007-D021, Limitations on DoD Non-Commercial T&M Contracts



# Primary Objectives

- ▶ Identify T&M spending trends and determine—
  - What DoD is buying
  - Why DoD is using T&Ms
  - Whether T&Ms are used when other contract types are suitable





# T&M Spending Trends

- ▶ T&M spending increased from \$5B in 1996 to over \$9.6B in 2005
  
- ▶ Steady 5.9 - 6.8% of overall service contract spending





# What DoD is Buying

- ▶ Over 75% for 3 categories of services
  - \$4.2B Professional, administrative, and management support services
  - \$1.8B Information technology and communications
  - \$1.3B Maintenance, repair, and rebuilding of equipment





# Why DoD is Using T&M

- ▶ Ease
- ▶ Speed
- ▶ Flexibility





# Appropriate Contract Type

- ▶ Written justifications do not address why other contract types are not suitable
- ▶ 82% T&M spending through orders under indefinite-delivery contracts
- ▶ T&Ms default contract type on indefinite-delivery contracts





# GAO Recommendations

- ▶ Noncommercial T&M
  - Adopt commercial D&F requirements
  - Structure indefinite-delivery contracts to authorize multiple contra types
- ▶ HCAs determine if T&Ms are the default contract type





# Recent Legislation

- ▶ DoD FY08 Authorization Act (S. 1548)
- ▶ Sec. 815, Clarification of Rules Regarding the Procurement of Commercial Services



# Prohibit T&M Except for

## Sec. 823

- ▶ Commercial services procured for support of a commercial item, as described in section 4(12)(E) of the OFPP Act
- ▶ Emergency repair services

## SARA

- ▶ Commercial services procured for support of a commercial item, as described in section 4(12)(E) of the OFPP Act
- ▶ Any other category of commercial services that is designated by OFPP



# Future of T&Ms in DoD

- ▶ We are headed down a road of more restrictive use.

